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OFFICE OF PETITIONS

In re Application :  
An, et al. :  
Application No. 10/588,883 : DECISION ON APPLICATION  
Filed: August 9, 2006 : FOR PATENT TERM ADJUSTMENT  
Atty Docket No. 57070-8017.US0 :

This is a decision on the "STATEMENT OF FACTS UNDER 37 C.F.R. 1.705(b)(2) IN SUPPORT OF REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed September 16, 2011. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred seventy-three (573) days to eight hundred forty-six (846) days.

The application for patent term adjustment is **DISMISSED**.

On June 17, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is five hundred seventy-three (573) days. On September 16, 2011, Applicants timely<sup>1</sup> submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is eight hundred forty-six (846) days.

Applicants fail to state whether the patent issuing from the application is subject to a terminal disclaimer.

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<sup>1</sup> Applicants filed the application for patent term adjustment together with the issue fee.

Applicants assert entitlement to a patent term adjustment of 846 days on the basis that date of completion of all 35 U.S.C. 371 requirements was August 9, 2006, not May 8, 2007.

Applicants' argument has been considered, but is not persuasive. Applicants appear to have confused the Office's responsibility to mail an Office action within fourteen months under 37 CFR 1.702(a)(1) with the Office's responsibility to issue a patent within three years under 37 CFR 1.702(b).

MPEP 1893.03(b) states:

The Date of all 35 USC 371 Requirements included on the NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.495 (Form PCT/DO/EO/903) is relevant for purposes of patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)(II) and 37 CFR 1.702(a)(1) when the USPTO has failed to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the requirements under 35 U.S.C. 371 were fulfilled.

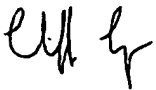
Here, 35 U.S.C. 371 requirements were completed on May 8, 2007. Accordingly, under 37 CFR 1.703(a)(1), the Office had until July 8, 2008 to mail a notification under 35 U.S.C. 132 or a Notice of Allowance. Applicants are correct that the actual filing date, for purposes of 37 CFR 1.702(b) "over three year delay", is August 9, 2006.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **five hundred seventy-three (573) days** (667 days of PTO delay, reduced by 94 days of Applicant delay).

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571)272-3207.



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